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## **REMARKS**

### **I. Amendments**

Claim 1 has been amended to clarify that the sample holding parts of the invention are adapted to move between an open position and a closed position at the analyzing position. Support for the amendment to claim 1 is provided by Fig. 6, and by the specification at page 11, lines 12-20. Claims 1 and 18 have also been amended by deleting the term "automated" from part (a) of the claim. Upon further consideration, Applicants believe that this term is not required to patentably distinguish the claimed invention from the prior art.

New claims 27 and 28 have been added, and are substantially similar to claims 1 and 18 as amended by the Preliminary Amendment filed July 16, 2002. Claim 27 further recites that the sample holding parts of the invention are adapted to move between an open position and a closed position at the analyzing position. Support for claims 27 and 28 is provided by claims 1 and 18 as originally filed; Figure 6; and the specification at page 11, lines 12-20.

The dependencies of claim 2, 3, 6, 7, 12, and 17 have been amended to depend upon claim 1 or new claim 27. The dependency of claim 19 has been amended to depend upon claim 18 or new claim 28.

No new matter has been added by any amendment herein.

### **II. Examiner interview**

Applicants thank the Examiner for the courtesy of the telephonic interview conducted on September 14, 2004. This communication is submitted pursuant to that interview, as summarized by the Interview Summary of record. Specifically, claim 1 has been amended to clarify the structural feature of the claimed apparatus responsible for the timing when the sample holding parts of the invention are adapted to move between an open position and a closed position at the analyzing position. As discussed during the interview, Applicants pointed out that method claim 18 already recites this timing step, which comprises fixing the sample at the analyzing position by means of a two-part fixing means.

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For the record, Applicants wish to clarify that the full name of interview participant Somlo is "Tommy Somlo", rather than "Thomas Somlo" as stated in the Interview Summary.

### III. Rejections under 35 U.S.C. § 103(a)- Claims 1-3, 6-17, 25, and 26

Claims 1-3, 6-23, 25, and 26 are pending. The prior art rejections of record are as follows:

- claims 1-3, 6-13, 17, and 26 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over EP 896,215 to Hammond et al. ("Hammond") in view of EP 767,369 to Trygstad ("Trygstad") and US 5,679,954 to Soloman ("Soloman");
- claims 1-3, 6-14, 17, and 26 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hammond in view of Trygstad and US 4,319,269 to Kajiura et al. ("Kajiura"); and
- claims 1-3, 6-17, 25, and 26 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hammond in view of Trygstad and DE 44 41 686 to Schilling ("Schilling").

For the following reasons, Applicants submit that Hammond, whether taken alone or in combination with any of the secondary references, does not suggest the claimed invention as defined by amended claim 1.

The apparatus of claim 1 comprises means for temporarily fixing a sample in at least one analyzing position. As clarified by amended claim 1, these means are characterized by first and second holding parts which are structurally configured to move between an opened position and a closed position *at the analyzing position*. That is, when the sample is at the analyzing position, the first and second holding parts are open to receive the sample, and close about the sample to place the sample in the proper position for the analysis.

None of the cited prior art documents disclose or suggest the above-recited feature of the claimed invention. Specifically, Hammond, Trygstad, Soloman, Kajiura, and Schilling, whether taken or alone or in combination, do not suggest an apparatus in which the holding parts are structurally capable of opening and closing at the *analyzing position*.

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Hammond discloses that a sample is clamped in a sample holder which is then manually inserted into a spectrometer for analysis (page 6, paragraph [0018]). There is no suggestion that the sample can be clamped in the sample holder while the holder is in the analyzing position.

Trygstad discloses that a sample is placed in a sample locator and covered with a masking element. The locator is then manually inserted into a slot of a measuring device to obtain a measurement. (col. 3, line 56-col. 4, line 4). There is no suggestion that the sample can be placed and aligned in the sample locator while the locator is in the analyzing position.

Soloman, Kajiura, and Schilling do not overcome the deficiencies of either Hammond or Trygstad to disclose an apparatus comprising a first and second holding parts which are structurally configured to move between an opened position and a closed position **at the analyzing position**.

Accordingly, the claimed invention is not suggested by any of the cited prior art documents. Withdrawal of the rejections of claims 1-3, 6-17, 25, and 26 under §103(a) is requested.

#### IV. Rejection under 35 U.S.C. § 103(a)- Claims 18-23

Claims 18-23 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Hammond in view of Schilling and Trygstad. Applicants submit that the cited prior art, whether taken alone or in combination, does not suggest the claimed method for presenting pharmaceutical samples to a sample presentation apparatus.

Applicants submit that their comments in Section III, above, are applicable and, therefore, responsive to the rejection of claims 18-23. Specifically, Hammond, Schilling, and Trygstad fail to suggest the "timing" step of the claimed method. That is, the cited prior art does not suggest a method of analyzing a pharmaceutical sample which comprises temporarily fixing a sample **at an analyzing position** by means of a fixing means which is structurally capable of opening and closing about the sample **at the analyzing position**. Advantageously, the claimed method permits rapid on-line or at-line analyses of pharmaceutical samples, and reduces or eliminates manual manipulation of the samples, thereby enhancing reproducibility and precision of the data obtained.

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Accordingly, the invention of claims 18-23 is not suggested by any of the cited prior art documents, and the rejection of claims 18-23 under §103(a) is improper and should be withdrawn.

#### V. Conclusion

Upon entry of this Amendment, claims 1-3, 6-23, and 25-27 are pending. Applicants respectfully submit that claims 1-3, 6-23, and 25-27 have been distinguished over the cited prior art, and are directed to patentable subject matter. Accordingly, Applicants request early allowance of the claims.

Authorization is hereby given to charge any fee due in connection with this communication to Deposit Account No. 23-1703.

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Respectfully submitted,

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